

Nos. 19-1402 and 19-1411

IN THE
Supreme Court of the United States

ANTONIO JUBIS ZACARIAS, *et al.*,
Petitioners,

v.

RALPH S. JANVEY, *et al.*
Respondents.

BARRY L. RUPERT, *et al.*,
Petitioners,

v.

RALPH S. JANVEY, as Court-Appointed Receiver for
Stanford Receivership Estate, *et al.*
Respondents.

**On Petitions for Writs of Certiorari to the
United States Court of Appeals for the Fifth Circuit**

**RESPONDENT BOWEN, MICLETTE & BRITT, INC.'S
MEMORANDUM IN OPPOSITION**

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RULE 29.6 STATEMENT

Respondent Bowen, Miclette & Britt, Inc. (“BMB”) does not have a parent corporation, and no publicly held corporation owns 10% or more of its stock.

MEMORANDUM IN OPPOSITION

BMB submits the following memorandum in opposition to the petitions for writ of certiorari:

1. The judgment of the United States Court of Appeals for the Fifth Circuit was entered on December 19, 2019, and its mandate was issued on the same date. The petition for writ of certiorari was therefore due on March 18, 2020.

2. Indeed, the Fifth Circuit *specifically told the Petitioners that their deadline was March 18, 2020*. On December 31, 2019, Judge Patrick Higginbotham denied the Petitioners’ application for extension of time to file a petition for rehearing *en banc*, explicitly stating that the Fifth Circuit no longer had jurisdiction over the case and that “the time for Petitioners to file a petition for a writ of certiorari [is] 90 days from December 19, 2019.” *See* Appendix to Brief in Opposition of Respondents Ralph S. Janvey, *et al.*, at 17a.

3. Judge Higginbotham’s warning to the Petitioners was crystal clear:

The opinions in this case issued on July 22, 2019. Petitioners filed a petition for rehearing *en banc* on August 5, 2019, urging that the panel’s opinion conflicted with an earlier opinion issued in *Sec. & Exch. Comm’n v. Stanford Int’l Bank, Ltd.*, 927 F.3d 830 (5th Cir. 2019). The panel granted that petition to clarify its view that there was no conflict and circulated that opinion to the full court. **Holds on the mandate were lifted, and the clarifying opinion and revised dissent were filed on December 19, 2019, with the direction that the mandate issue forthwith,** see Docket No. 240; FED. R. APP. P. 41(a), **thereby**

commencing the time for Petitioners to file a petition for a writ of certiorari, 90 days from December 19, 2019. 16AA FED. PRAC. & PROC. JURIS. § 3986 (4th ed. 2019) (“[T]he court can grant rehearing only while it still has jurisdiction of the case and its jurisdiction ends when the mandate issues.”). The motion for extension of time is denied. **Further motions for extension of time shall be addressed to the Supreme Court of the United States.**

Id. (emphasis added) (citations omitted).

4. Ignoring Judge Higginbotham’s warning, the Petitioners filed a rehearing petition and a motion to recall the mandate, both of which were summarily denied on January 21, 2020. Pet. App. 118; Janvey App. 23a. The Petitioners’ untimely motions, filed after the Fifth Circuit had ceased to have any jurisdiction over the case, did not reset the clock or extend the Petitioners’ deadlines. *See* Stephen M. Shapiro, et al., *Supreme Court Practice* Ch. 6.3, n. 20 (11th ed. 2019) (“An untimely petition for rehearing that is not considered by the lower court does not toll the time for petitioning.”)(citing *Bowman v. Loperena*, 311 U.S. 262, 266 (1940) (“The filing of an untimely petition for rehearing which is not entertained or considered on its merits ... cannot operate to extend the time for appeal.”)); *see also Allegrucci v. United States*, 372 U.S. 954 (1963) (certiorari “denied for the reason that the petition was not timely filed”).

5. Inexplicably, the Petitioners waited until June 19, 2020 to file their petitions in this Court – a full six months after the clock had started ticking, and long after the expiration of the jurisdictional deadline. The Court’s blanket 60-day COVID extension cannot help them because the Petitioners had already missed their deadline by the time the Court’s order was issued. Furthermore, even if the

Petitioners *had* obtained the maximum 60-day extension, they still would have missed this Court's jurisdictional deadline by more than a month.

6. Judge Higginbotham provided clear and specific guidance to the Petitioners regarding their filing deadlines, which they wholly disregarded. The petitions are untimely, and the Court lacks jurisdiction to consider them under 28 U.S.C. § 2101(c).

THEREFORE, the petitions for writ of certiorari should be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bradley W. Foster", with a long horizontal flourish extending to the right.

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